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Attorneys for Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

SAM CLAYTON,)	
)	No. C 07-2781 CW
Plaintiff,)	
)	
v.)	
)	ANSWER
Secretary of Dept of Homeland Security, aka)	
MICHAEL CHERTOFF;)	
Director of U.S. Citizenship and Immigration)	
Services, aka EDUARDO AQUIRE;)	
Deputy District Director of U.S. Citizenship)	
and Immigration Services' San Francisco Office,)	
aka DAVID STILL;)	
Director of FBI aka ROBERT S. MUELLER;)	
Attorney General;)	
Department of Homeland Security; U.S.)	
Citizenship and Immigration Services; FBI;)	
United States;)	
)	
Defendants.)	
)	

Defendants hereby submit their answer to Plaintiff's Complaint for Writ in the Nature of Mandamus and Declaratory Judgment.

1. Paragraph One consists of Plaintiff's conclusions of law for which no answer is necessary; however, to the extent a response is deemed to be required, the Defendants deny that they have improperly withheld action on Plaintiff's application to his detriment.

ANSWER
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PARTIES

2. Defendants admit the allegations in Paragraph Two.

3. Defendants admit that Michael Chertoff is the Secretary of Homeland Security.

4. Defendants admit the allegations in Paragraph Four.

5. Defendants admit the allegations in Paragraph Five with the exception that Rosemary Melville is the District Director of District 21.

6. Defendants admit the allegations in Paragraph Six.

JURISDICTION

7. Paragraph Seven consists of Plaintiff's allegation regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny the allegations in this paragraph.

VENUE

8. Defendants admit the allegations in Paragraph Eight.

EXHAUSTION OF REMEDIES

9. Defendants deny the allegations in Paragraph Nine.

CAUSE OF ACTION

10. Defendants admit the allegations in Paragraph Ten.

11. Defendants admit the allegations in Paragraph Eleven with the exception that the I-130 was filed initially at the National Benefits Center through the Chicago Lockbox as required on August 14, 2006.

12. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twelve.

13. Defendants admit that the application is pending with USCIS; however, Defendants deny the remaining allegations in Paragraph Thirteen.

14. Defendants deny the allegations in Paragraph Fourteen.

15. Defendants deny the allegations in Paragraph Fifteen.

16. Defendants deny the allegations in Paragraph Sixteen.

17. Defendants are without sufficient information to admit or deny the allegations in Paragraph Seventeen.

18. Paragraph Eighteen consists of Plaintiff's conclusions of law for which no answer is necessary; however, to the extent a response is deemed necessary, the Defendants deny the allegations in Paragraph Eighteen.

19. Defendants are without sufficient information to admit or deny the allegations in Paragraph Nineteen.

PRAYER

20. Paragraph Twenty consists of Plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The court should dismiss the complaint under Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction.

WHEREFORE, Defendants pray for relief as follows:

That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's complaint with prejudice; that Plaintiff take nothing; and that the Court grant such further relief as it deems just and proper under the circumstances.

Dated: August 14, 2007

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

/s/

ILA C. DEISS
Assistant United States Attorney
Attorneys for Defendants

CERTIFICATE OF SERVICE

Clayton v. Chertoff, No. 07-2781

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she caused a copy of:

ANSWER

to be served this date on the party(ies) in this action, by placing the true copy thereof, addressed as follows:

Sam Clayton
1049 Market Street, #203
San Francisco, CA 94103

☒ First Class Mail by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with the office's practice.

☐ Facsimile (FAX) Telephone No.

☐ Personal Service (Messenger)

☐ Federal Express

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 14, 2007

/s/

TIFFANI CHIU
Paralegal Specialist